

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EUGENIA ARCE ALANDIA,

Plaintiff,

v.

FOUR SEASONS LAS VEGAS
EMPLOYMENT, INC., et al.,

Defendants.

2:08-CV-1838 JCM (LRL)

ORDER

Presently before the court is plaintiff's motion to amend the complaint. (Doc. #20) Defendants Mandalay Corp. and MGM-Mirage (hereinafter "defendants") opposed the motion to amend and filed a counter-motion to dismiss. (Doc. #28). Plaintiff filed an opposition to the counter-motion to dismiss combined with a reply in support of the motion to amend. (Doc. #31). Additionally before the court is plaintiff's motion to remand (doc. #36) to which defendants filed an opposition (doc. # 47) and plaintiff filed a reply. (Doc. #49).

Plaintiff Eugenia Arce-Alandia is a banquet server at the Mandalay Bay resort and casino. Plaintiff claims that her employer did not pay her the overtime compensation required under Nev. Rev. Stat. § 608.018. Defendants removed this case to this court on the grounds that plaintiff's claims are preempted by Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a) and require interpretation of the collective bargaining agreement under which plaintiff is employed.

...

A. Motion to Remand

In her motion to remand, plaintiff argues that this case should be remanded to state court because this case is solely a matter of state law and that federal question jurisdiction does not apply. This court finds plaintiff's argument is an unpersuasive attempt to avoid the existence of the collective bargaining agreement.

Specifically, Nev. Rev. Stat. § 608.018(3)(c) provides that "subsections 2 and 3 do not apply to [e]mployees covered by collective bargaining agreements which provide otherwise for overtime." Plaintiff erroneously interprets the words "provide otherwise for overtime" as the Nevada legislature's attempt to set a minimum standard for overtime protections. Based on the plain language of the statute, this court finds that Nev. Rev. Stat. § 608.018(3)(c) specifically waives applicability of the statute to employees covered by collective bargaining agreements.

Furthermore, this court finds that plaintiff's claim is dependent on the interpretation and application of Section 301 of the LMRA and the collective bargaining agreement that governs the terms of her employment.

Therefore, the plaintiff's motion to remand to state court is denied.

B. Motion to Dismiss

This court finds that plaintiff's lawsuit should be dismissed on the basis of duplicative litigation. District courts retain broad discretion to control their dockets and "[i]n the exercise of that power they may impose... default or dismissal." *Thompson v. Hous. Auth. Of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). In determining whether a second action is duplicative of the first, the court must consider whether the causes of action, relief sought, and parties or privies are the same. *Adams v. California Dept. of Health Services*, 487 F.3d 684, 689 (9th Cir. 2007).

1. Same Causes of Action and Relief Sought

To determine whether the two suits are identical, courts must apply the "transaction test," and consider the following: (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same

1 right; and (4) whether the two suits arise out of the same transactional nucleus of facts. *Id.*

2 Here, plaintiff's complaint is strikingly similar to *Jacobs v. Mandalay*, District of Nevada
3 Doc. # 08-cv-640, which is currently pending appeal before the Ninth Circuit (Doc. # 8-17765).
4 Both actions assert rights under the same Nevada overtime compensation statute, the same
5 infringement of that right, and arise out of the same transactional nucleus of facts, which in this case
6 is the collective bargaining agreement. Furthermore, both lawsuits present substantially the same
7 evidence and arguments.

8 Additionally, both lawsuits seek the same relief. Accordingly, this court finds that the two
9 lawsuits involve the same cause of action.

10 2. Same Parties or Privies

11 In considering whether two lawsuits have the same parties or privies, the traditional concept
12 of privity is expanded to include "a broader array of relationship which fit under the title of virtual
13 representation." *Adams*, 487 F.3d at 691 (citing *Kourtis v. Cameron*, 419 F.3d 989, 996 (9th Cir.
14 2005). This type of virtual representation also includes "a close relationship, substantial
15 participation, and tactical maneuvering." *Id.*

16 Although the plaintiffs in the two lawsuits are different individuals, this court finds that they
17 are in privity for the following reasons. Plaintiff Arce-Alandia and the plaintiff in *Jacobs* are both
18 banquet-servers who are asserting the same rights on behalf of the same class of employees.
19 Additionally, both plaintiffs share the same attorney. The named defendants are not identical in the
20 two lawsuits because MGM-Mirage and Four Seasons were not named in *Jacobs*. However, they
21 are part of the same class of defendants as casino resorts located in Las Vegas, Nevada.
22 Furthermore, the court finds that *Jacobs* virtually represents Arce-Alandia and that the second action
23 is an attempt to have a second bite at the apple.

24 Based on this analysis and the court's strong interest in controlling its docket, this court finds
25 that the present action must be dismissed because it is duplicative litigation.

26 **C. Motion to Amend**

27 Plaintiff seeks to amend her complaint to correct the naming of defendant Four Seasons Las
28

1 Vegas Employment, Inc. (Doc. #20.) A court may deny a motion to amend where amendment would
2 be futile. *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004) (finding district court's
3 denial of motion to amend appropriate where amendment could not provide additional facts
4 necessary to save plaintiff's claim). Based on the discussion above, plaintiff's proposed second
5 amended complaint would not cure any of the defects in her claim. Therefore, the plaintiff's motion
6 to amend (doc. #20) is also denied.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's motion to
8 remand (Doc. #36) be, and the same hereby is, DENIED.

9 IT IS FURTHER ORDERED that plaintiff's motion to amend (doc. #20) be, and the same
10 hereby is, DENIED.

11 IT IS FURTHER ORDERED that defendants motion to dismiss (doc. # 28) be, and the same
12 hereby is, GRANTED. Plaintiff's complaint is dismissed as to all defendants.

13 IT IS FURTHER ORDERED that defendants' emergency motion to stay briefing on
14 plaintiff's motion to remand (doc. #40) be, and the same hereby is, DENIED as moot.

15 DATED this 14th day of January, 2010.

16
17 
18

UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28